

NOTICES OF SUPPLEMENTAL PROPOSED RULEMAKING

After an agency has filed a Notice of Proposed Rulemaking with the Secretary of State's Office for *Register* publication and filing and the agency decides that prepare a Notice of Supplemental Proposed Rulemaking for submission to the Office. The Secretary of State shall publish the Notice under the Administrative Procedure Act (A.R.S. § 411001 et seq.) publication of the Notice of Supplemental Proposed Rulemaking in the *Register* before holding any oral proceedings (A.R.S. § 411022).

NOTICE OF SUPPLEMENTAL PROPOSED RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE

PLANT SERVICES DIVISION

PREAMBLE

1. **Register citation and date for the original Notice of Proposed Rulemaking:**
Notice of Proposed Rulemaking: 4 A.A.R. 2326, September 4, 1998.
2.

<u>Sections Affected</u>	<u>Rulemaking Action</u>
R3-4-708	Amend
R3-4-717	Amend
R3-4-737	Amend
3. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 3-445
Implementing statute: A.R.S. § 3-445
4. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Shirley Conard, Rules Specialist
Address: Arizona Department of Agriculture
1688 West Adams, Room 124
Phoenix, Arizona 85007
Telephone: (602) 542-0962
Fax: (602) 542-5420
5. **An explanation of the rule, including the agency's reasons for initiating the rule:**

This rulemaking revises the sampling procedure for soluble solids and clarifies that a container shall not bear deceptive information.

R3-4-708(C), which specifies the "maturity sample and lot tolerance chart" created confusion within the industry. When cantaloupe samples were taken, it was difficult to follow the chart because of conflicting data and variances. This data could result in inconsistent sampling and create an adverse economic impact. When this Section was last promulgated it was based upon California's maturity sample and lot tolerance chart. Since that time, California has removed this chart from their requirements for the same reason the Department is requesting removal in this rulemaking. The sampling method proposed in R3-4-708(C) has been requested, and approved, by industry and the Department, as a fair way of sampling the product.

Standard container addition. The new standard container size listed in R3-4-708(G), conforms to the dimensions of the returnable produce containers proposed by the produce industry, and fits on the standard 48" X 40" pallet better than any of the other melon cartons currently in use.

Bulk container depth addition. Market forces have dictated that 24" and 36" bins are not suitable in certain applications. Major chain stores have embraced the concept of mass displays using the 18" and 48" bin depths and through this rulemaking producers are responding to that demand.

The 1991-92 legislative session brought about new statutes prescribing comprehensive marketing orders, and more understandable standards in fruit, vegetable and citrus fruit regulations – from inspections and licensing to administration and assessments. These statutes also repealed, or delay repealed (January 1, 1994) certain fruit, vegetable and citrus fruit standards that the industry felt were more practical within rule. The January 6, 1994 rulemaking transferred these standards to rule. However, requiring that containers may not contain deceptive information was inadvertently excluded in that rulemaking.

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6. An explanation of the substantial change which resulted in this supplemental notice:
R3-4-708(G): Standard container addition, 23 5/8" X 15 3/4" X 7 3/4", and the addition of 18" and 48" bulk container depths.
R3-4-717(F): An 18" depth was added to bulk containers.
7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:
Not applicable.
8. The preliminary summary of the economic, small business, and consumer impact:
It is not anticipated that the adoption of this rule will have any financial impact on government, private industry, small business, or consumers.
- A. *Estimated Costs and Benefits to the Arizona Department of Agriculture.*
The Department is not economically affected by the implementation and enforcement of this rulemaking.
- B. *Estimated Costs and Benefits to Political Subdivisions.*
Political subdivisions of this state are not directly affected by the implementation and enforcement of this rulemaking.
- C. *Businesses Directly Affected By the Rulemaking.*
This rule will not economically affect any person or entity doing business with the Department.
- D. *Estimated Costs and Benefits to Private and Public Employment.*
Private and public employment are not directly affected by the implementation and enforcement of this rulemaking.
- E. *Estimated Costs and Benefits to Consumers and the Public.*
Consumers and the public are not directly affected by the implementation and enforcement of this rulemaking.
- F. *Estimated Costs and Benefits to State Revenues.*
This rulemaking will have no impact on state revenues.
9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:
Name: Shirley Conard
Address: Arizona Department of Agriculture
1688 West Adams, Room 124
Phoenix, Arizona 85007
Telephone: (602) 542-0962
Fax: (602) 542-5420
10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:
No public proceeding is scheduled. A person may submit written comments or a written request that an oral proceeding be held on the proposed rule. Requests must be submitted no later than 4 p.m., November 30, 1998, to the following person:
Name: Shirley Conard
Address: Arizona Department of Agriculture
1688 West Adams, Room 124
Phoenix, Arizona 85007
Telephone: (602) 542-0962
Fax: (602) 542-5420
11. A summary of the principal comments and the agency response to them.
None.
12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
None.
13. Incorporations by reference and their location in the rules:
None.

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14. The full text of the rules follows:

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE

PLANT SERVICES DIVISION

ARTICLE 7. FRUITS AND VEGETABLES STANDARDIZATION

Section

- R3-4-708. Cantaloupe Standards, Containers, Packing Arrangements
- R3-4-717. Melon Standards (Persian Melons, Casabas, Crenshaw, Honeydew, Honeyball, Other Specialty Melons, and Watermelons)
- R3-4-737. Container Labeling for Fruit and Vegetables

ARTICLE 7. FRUITS AND VEGETABLES STANDARDIZATION

R3-4-708. Cantaloupe Standards, Containers, Packing Arrangements

A. Definitions.

1. "Mature" means that the cantaloupe has reached the stage of maturity which will insure the proper completion of the normal ripening process and the arils which ~~that~~ surround the seed during the development of maturity have been absorbed and, in addition, that the juice of the edible portion contains not less than 9% soluble solids as determined by the standard hand refractometer.
 - a. Soluble solids determination: Select the least mature looking cantaloupes and remove two ½ inch diameter plugs from opposite sides of each melon, ½ the distance between the stem and blossom ends. Remove the outer 3/8 inch of the rind from the plugs, however, use all the rag on the inside of the plugs. Extract the juice from the plugs and determine the percentage of soluble solids by using the standard hand refractometer.
 - b. Low sugar indicators: Poor netting, dark spots or sunburn, soft melons, dark green color, and melons which have been torn from the vine or have not reached full slip.
2. "Lidded or closed" means:
 - a. ~~In the case of corrugated fiberboard containers, the container opening is~~ The opening of corrugated fiberboard containers shall be completely covered, except for necessary ventilation openings, with material similar to that used in the construction of the sides and bottom of such container and is securely attached to the top.
 - b. ~~In the case~~ Forty percent or more of nailed wooded, wirebound, or other containers, ~~40% or more of the container opening is~~ openings shall be covered with material similar to that used in the construction of the sides and bottoms of such container and is securely attached to the top.
3. "Serious damage" includes damage caused by bruises, sunburn, growth cracks, cuts sponginess, flabbiness, wilting.

B. Cantaloupes shall be mature, but not overripe, fairly well netted, and free from mold, decay, and insect damage which has

penetrated or damaged the edible portion of the cantaloupe and free from serious damage.

- C.** If a preliminary inspection of the cantaloupes indicates that further testing is required, as ~~delineated~~ prescribed in R3-4-739(A) and (B), the inspector shall ~~initiate the following maturity sampling and tolerance tests:~~ randomly select the following number of melons and average the results to determine the percent of soluble solids: The maturity sampling of cantaloupes in containers shall consist of the following:

<u>Melons Per Container</u>	<u>Min. Melons Tested</u>
9 or less	7
12	8
15	11
18	13
22	15
23	16

MATURITY SAMPLE AND LOT TOLERANCE CHART

<u>Melons Per</u>	<u>Min. No.</u>	<u>Number</u>	<u>Each Crate</u>	<u>Lot</u>
<u>Crate</u>	<u>Test Melons</u>	<u>Crates</u>	<u>No. Low Tests</u>	<u>Passable</u>
2-20	4	2	2	-Yes
2-20	4	3	2	-No
2-20	4	2	3	-No
21-40	6	2	3	-Yes
21-40	6	3	3	-No
21-40	6	2	4	-No
41-60	8	2	4	-Yes
41-60	8	3	4	-No
41-60	8	2	5	-No
61-80	10	12	15	-Yes
61-80	10	3	5	-No
61-80	10	2	6	-No

D. ~~Not more than five immature melons from two bulk containers or less shall be allowed from one bulk container lot. Not more than five immature melons from more than two bulk containers shall be allowed from each of two bin lots or more.~~

E.D. ~~Not more than 5%, by count, of the cantaloupes in any one container 1 lot shall be allowed for any one 1 cause and not more than 10%, by count, shall fail to meet the total requirements prescribed in this Section.~~

F.E. ~~All cantaloupes in each container shall be of one 1 variety or of similar varietal characteristics.~~

G.F. ~~Cantaloupes packed in the standard containers shall be uniform in size and shall conform with the following:~~

1. ~~All containers of cantaloupes shall have the following information appearing in plain sight and in plain letters on one 1 outside end:~~

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- a. The name of the person who first 1st packed or authorized the packing of the cantaloupe, or the name under which such packer is engaged in business; and,
 - b. ~~A sufficiently~~ An explicit address to permit ready location of ~~such the~~ person or business.
2. Each container of cantaloupes shall be conspicuously marked in letters of not less than 1/2 inch in height, stating the exact number of melons packed therein.
 3. All cantaloupes shall be packed in a regular compact arrangement in a closed standard container.
 4. Standard containers shall be in counts of 6, 9, 12, 15, 18, 22/23, 30 or 36.
 5. Consumer containers or single layer containers shall be in counts of 5, 6, 8, or 9.

H-G. Standard and bulk containers shall conform to the following inside dimensions, in terms of inches:

	Length	Width	Depth
Standard containers	16-7/16"	13-9/16"	6"
and consumer packs	16"	12-13/16"	10-1/2"
	21-7/8"	12"	12"
	21-7/8" to		
	22-1/8"	13"	13" to 13-1/2"
	22-1/2"	13"	13-1/2"
	21-7/8" to 22"13"		9" to 9-1/2"
	22 to 22-3/8"	13"	9" to 10"
	22"	13"	10-1/2"
	12-7/8"	12-7/8"	15-1/2" to 16"
	16-3/8" to	12-3/8" to	9-3/4" to
	17"	13-1/4"	10-1/2"
	16-1/2"	13-5/8" to 14"	10-1/4"
	22-1/8"	16"	6-3/4 to 8-3/4"
	22-1/8"	14"	7-3/4"
	22-1/8"	14-1/2"	5-3/4"
	<u>23 5/8"</u>	<u>15 3/4"</u>	<u>7 3/4"</u>
	17"	15-1/4"	6-1/2"
Bulk containers	48"	38"	<u>18", 24",</u> <u>or 36", or 48"</u>

R3-4-717. Melon Standards (Persian Melons, Casabas, Crenshaw, Honeydew, Honeyball, other specialty melons and watermelons)

A. Definitions.

1. "Mature" means that the melon has reached the stage of maturity ~~which that~~ will insure the proper completion of the normal ripening process and that the arils which surround the seed during the development of maturity have been absorbed. ~~In the case of honeyball and honeydew melons, the~~ The juice of the edible portion of honeyball and honeydew melons shall contain not less than 10% soluble solids as determined by the standard hand refractometer. If a preliminary inspection of the melons indicates that further testing is required, as ~~delineated~~ prescribed in R3-4-739(A) and (B), the inspector shall initiate the following maturity sampling and tolerance tests and average the results to determine the percent of soluble solids:
 - a. When sampling honeydews and honeyball melons for maturity in lot containers over 600, ~~three 3~~ three 3 melons shall be added for each additional 500 or fraction thereof. The maturity sampling of honeydews in containers shall consist of the following:

Containers in Lot	Containers Sampled
50 or less	3
51 to 200	5
201 Up to 400	7
401 to 600	9

- b. When sampling honeydews and honeyball melons for maturity in bulk containers, ~~select 13 7 of the~~ least mature looking honeydews or honeyballs shall be selected at random from the top of the bulk container. The maturity sampling of honeydews or honeyballs in bulk containers shall consist of the following:

No. of Bulk Containers	Containers Sampled
Less than 10	2
10 to 30	3
31 to 50	4
51 or More	5

- c. ~~Except in the case of~~ for yellow flesh watermelons, the flesh of the watermelon shall be colored to a degree not less than that indicated by Hue 4, Chrome H, in Plate 1, of A. Maerz and M. Rea Paul Dictionary of Color, First Edition, published 1930, and is incorporated herein by reference and does not include any later amendments or editions of the incorporated matter. This color standard is on file with the Office of the Secretary of State, or may be examined in the Fruit and Vegetable Standardization Offices, Arizona Department of Agriculture, 1688 West Adams, Phoenix, Arizona, 85007; or in the Fruit and Vegetable Division, AMS, U. S. Department of Agriculture, South Building, Washington, D.C., 20250.

2. "Serious damage" includes:

- a. ~~In the case of Any~~ Any melons, with damage caused by growth cracks, cuts, bruises, sunburn, softness.
- b. ~~In the case of Any~~ Any watermelons, with damage caused by growth cracks, cuts, bruises, sunburn, whiteheart, rindrot, softness.
 - i. ~~Beetle damage shall be considered is~~ Beetle damage shall be considered is serious damage when it affects an area of over 10% of the total surface of the watermelon.
 - ii. ~~Whiteheart shall be considered is~~ Whiteheart shall be considered is serious damage if apparent on internal examination.
 - iii. ~~Sunburn shall be considered is~~ Sunburn shall be considered is serious when the sunburned area, regardless of size, is devoid of green coloration and is turning brown.
 - iv. ~~Rindrot shall be considered is~~ Rindrot shall be considered is serious damage when the distinct brown color or decay in the edible flesh of at least 1 inch in aggregate occurs in the edible portion of the melon.

- B. All melons, except watermelons, when being packed or offered for sale shall be mature but not overripe, and shall be free from mold, decay and insect damage which has penetrated or damaged the edible portion of the melon, and free from serious damage.
- C. Watermelons shall be fairly well shaped, mature, but not overripe and shall be free from mold, decay, insect and beetle damage; and free from serious damage.
- D. Not more than 5%, by count, of the melons in any ~~one 1~~ one 1 lot shall be allowed for any ~~one 1~~ one 1 cause and not more than 10%, by count, shall fail to meet the total requirements prescribed in this Section.

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- E. Standard containers in which melons are packed shall have the following information appearing in plain sight and in plain letters on one outside end:
1. The name of the person who first packed or authorized the packing of the melons, or the name under which ~~such~~ the packer is engaged in business; and,
 2. ~~A sufficiently~~ An explicit address to permit ready location of ~~such~~ the person or business.
- F. Bulk containers in which melons are packed shall be 18", 24", 36", or 42" in depth.

R3-4-737. Container Labeling for Fruit and Vegetables

- A. All containers shall bear in plain sight and plain letters on ~~one~~ 1 outside panel the following:
1. The name of the shipper;
 2. The city, state and zip code of the shipper;
 3. The common or generic name of the commodity in each container;
 4. The count, measure or net weight of the commodity contained in each container, except ~~in the case of~~ for bulk containers.
- B. No container shall bear any false or misleading statement.